IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3445 of 2003
to
SPECIAL CIVIL APPLICATION No 3529 of 2003

and

SPECIAL CIVIL APPLICATION No 3531 of 2003
to
SPECIAL CIVIL APPLICATIONNo 3544 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHAMPAKLAL D. BRAHMBHATT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3445 of 2003
MR PS PATEL for Petitioner No. 1
MRS MANISHA SHAH, Ld. AGP for Respondent No. 1-2
(In all the matters)

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 28/03/2003

COMMON ORAL JUDGEMENT

1. In all these petitions when it was mentioned yesterday, the learned Counsel appearing for the petitioners was instructed by the Court to give advance copy to the office of the Government Pleader. Today when the matters are taken up for hearing, Mrs.Manisha Shah, learned AGP has stated that she has received instructions to appear through Mr.M.A.Patel, Dy. Director of Primary Education and also the defence to be taken on behalf of the State Government.

2. Rule. Mrs.Manisha Shah waives service of notice of rule on behalf respondents No.1 and 2. With the consent of Mr.Raval appearing with Mr.Patel as well as Mrs.Shah, all the matters are taken up for final hearing today.

3. Heard learned Counsel appearing on behalf of the petitioners and the learned AGP. It appears that the issue involved in these matters are fully covered by the decision of this Court dated 25-3-2003 passed in SCA No.3189/2003 and allied matters and, therefore, no elaborate discussion is required, more particularly because on behalf of the petitioners as well as on behalf of the respondents, the contentions are identical as they were raised in the aforesaid decision dated 25-3-2003 passed in SCA No.3189/2003 and allied matters in the case of "Jivabhai Kodarnhai Vankar vs. State of Gujarat". Here also the petitioners are working as Primary Teachers in different schools situated in Vadali Taluka and they are challenging the limited action as they were in the earlier matter of SCA No.3189/2003.

4. Considering the facts and circumstances of the case and for the very reasons which have been recorded by this Court in its earlier decision dated 25-3-2003 all these petitions deserve to be allowed to the extent and at par with the directions given in the earlier decision and, therefore, on the same line it is just and proper to give directions to the authorities, which shall meet with the ends of justice:

4.1) All the petitioners shall file separate undertaking to this Court that they shall not

raise any objection in future regarding the recovery of the amount of penalty directly by appropriating 33% of the salary and other perquisites i.e. actual pay until they are in service and they shall also not raise any objection to the balance recovery to be made in case the concerned petitioners are retiring in normal course and they shall not raise any objection for recovery of such amount from the retiral benefits. The said undertaking shall also include that the concerned petitioner shall deposit the principle amount of LTC on or before 21-4-2003 and such undertaking shall be filed within a period of two weeks from today before this Court by each of the petitioners separately and the copy of the said undertaking shall be produced by the petitioners before the concerned authorities.

4.2) The concerned petitioner shall also file undertaking as per circular dated 3-10-1988 before authority on or before 21-4-2003.

4.3) If the principle amount of LTC is deposited on or before 21-4-2003 and if such undertaking as per above para 4.1 is filed before this Court and the copy of the same is produced before the authorities, and if further undertaking is filed before concerned authority as per above para 4.2 then in that case, the authorities shall recover twice the amount of LTC as penalty by directly appropriating 33% of the actual pay of the concerned employees and only 67% of the actual pay shall be actually paid to the concerned petitioners. Such recovery shall continue until the amount of penalty is fully recovered and if any of the concerned petitioners is retiring before the amount is fully recovered, the concerned authorities shall recover the said balance amount from the retiral benefits including the provident fund, gratuity, etc. by directly appropriating towards the balance amount of penalty.

4.4) Until the principle amount of LTC and the penalty, as observed earlier, is fully recovered, the authorities shall not take any action for criminal prosecution or departmental inquiry against the employees concerned as per circular dated 3-10-1988. It is made clear that upon failure of the concerned petitioners of

depositing the principle amount of LTC and upon raising dispute regarding recovery of penalty inspite of the aforesaid undertaking to this Court and to the concerned authority the aforesaid directions shall automatically stand vacated in case of concerned petitioner and the authorities shall be at liberty to lodge criminal prosecution against the concerned petitioners in accordance with law and the authorities shall also be at liberty to take departmental proceedings including that of suspension of the employees concerned. The aforesaid liberty to the employer/authorities shall be in addition to the liability of the concerned petitioners, as the case may be, for breach of the undertaking and for the proceedings under the Contempt of Court Act.

5. All these petitions are disposed of in terms of the aforesaid directions. Rule made absolute to the aforesaid extent only. There shall be no order as to costs. Office shall forward copy of the judgement dated 25-3-2003 passed in SCA No.3189/2003 with the writ of these petitions.

28-3-2003 (Jayant Patel, J.)

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